IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 604 OF 1995

The State of Maharashtra .. Appellant
(Through the Special Land Acquisition Officer. (Orig.Opponent
Metro Centre No.4, Panvel, District. Raigad

v/s.

Shri Prakash Vasudeo Deodhar .. Respondent

ALONGWITH

FIRST APPEAL NOS.605/1995 TO 621/1995, 22/1996 TO 24/1996, 561/1997, 388/89, 390/1989, 394/1989, 399/1989, 400/1989, 403/1989, 408/1989, 1366/1988, 706/1989, 1061/1989, 1065/1989, 1098/1989, 456/1991, 458/1991, 463/1991, 462/1991, 757/1992, 395/1993, 758/1992 FILED BY THE STATE.

FIRST APPEAL NOS.1414/1996, 1429/1996, 1428/1996, 1423/1996, 1418/1996, 1427/1996, 1421/1996, 1415/1996, 1420/1996, 1430/1996, 1426/1996, 1422/1996, 1416/1996, 1419/1996, 1431/1996, 1417/1996, 1425/1996, 1424/1996, 1373/1996 TO 1383/1996, 1055/1989, 1056/1989, 665/1989, 1066/1989, 664/1989, 663/1989, 668/1989, 670/1989, 1092/1989, 1038/1989, 1045/1989, 1062/1989, 1064/1989, 119/1991, 1127/1991, 729/1991 FILED BY THE CLAIMANTS.

AND

CIVIL APPLICATION NOS. 4246/1995, 4243/1995, 4314/2005, 789/1990, 6099/94, 5781/1991, 5567/1992, 2214/2008, 2215/2008,

2216/2008, 4922/2003, 4923/2003 FILED BY THE STATE.

CIVIL APPLICATION NOS. 3513/2007, 4858/2003, 1636/2007, 3732/2006, 3016/2003, 2219/2008, 4338/2003, 4853/2003, 4852/2003, 4265/2003, 939/2003, 670/1989, 4857/2003, 4070/2001, 3924/2001, 3932/2001, 4716/2003, FILED BY THE CLAIMANTS.

AND

CROSS OBJECTION ST. NOS. 33261/1997 AND 395/1993.

Mr. K.K. Tated, Assistant Government Pleader for the State.
Mr. R.V. Pai with Mr. S.M. Kamble for the claimants.
Mr. N.P. Shimpi i/by Mr. P.K. Dhakephalkar for the respondent Nos.1A in F.A. No.388 of 1989.

CORAM : SWATANTER KUMAR, C.J. &
V.M. KANADE, J.

Date of pronouncing the judgment : 2nd June, 2008
Date of reserving the judgment : 12th June, 2008

JUDGMENT (Per Swatanter Kumar, C.J.)

By a common judgment dated 14th October, 1994, the learned District Judge, Raigad-Alibag at Alibag disposed of number of Land Acquisition References made to the court by the Collector under

section 18 of the Land Acquisition Act (hereinafter referred to as `the Act')and some petitions filed by the claimants under section 28A of the Act. While dealing with these references and petitions, the learned reference court enhanced the compensation payable to the claimants for acquisition of their respective lands to Rs.35/- per sq. mtr. for the land near to Highway while the lands situated beyond 1000 metres from Highway were awarded the compensation at the rate of Rs.25/- per sq.metre. The State Government felt aggrieved by the enhanced compensation awarded by the court to the claimants and have preferred 44 appeals and one cross-objection in claimant' s appeal against the said judgment. The claimants felt that they were entitled to even higher compensation and therefore, have also filed 46 appeals before this court besides one cross-objection in State appeal. All these appeals/cross-objections raise common questions of fact and law for determination. Therefore, we would dispose of all the 90 appeals and two cross-objections filed by the parties as noticed in the title of the judgment.

2. Now, we may notice the necessary facts giving rise to the present appeals. The State Government issued a notification under section 4 of the Act on 3rd February, 1970 intending to acquire lands from Panvel and Kamothe villages in Raigad district for the residential-commercial project to be developed by CIDCO. In furtherance to this notification, declaration under section 6 of the Act was issued on 11.1.1973 read with erratum dated 12th February, 1973. The Collector while exercising the power of Special Land Acquisition Officer after following due procedure prescribed under the provisions of the Act, made different awards during the period 1975 to 1985. The award under section 11 of the Act was declared during this period and compensation between Rs. 1.5 to Rs.10 per sq. metre was awarded. It appears from the record that petitions under sections 28A were also filed and further awards were passed on 16th September, 1987 with respect to 13 land acquisition proceedings and the compensation was awarded at the rate ranging from Rs.12 to Rs.18 per sq. meter. Dissatisfied with these awards, the claimants had made applications to the Collector for making references to the court

of competent jurisdiction under section 18 of the Act. The land reference Nos.110/89 to 117/89 and 119/89 to 123/89 were preferred by the claimants under section 28A(3) of the Act. As already noticed, all these proceedings were based upon the common evidence. The learned reference court while enhancing the compensation held as under:

> "40. The market value has also got fantastic bearing on the terms of payment or on the terms of considerations which has to be fixed in various sale transactions. Any commercial transaction, therefore, if having a weightage of deferred payment, the basis value of the immovable property thereunder shoots up even to the limit of sky with a noticiable difference and distinction. This has got to be considered as annexed with the impact of rate of interest. That is why the impact of interest on call money also has to be considered even while fixing the value of the lands so acquired.
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> 41. To my mind Mr. Joglekar had followed the correct method while fixing the market value of these lands by an assessment of multiplier as demand versus supply. No doubt that this rule has also got exception of the case where the prices of such lands even in respect of small acquisition of lands or small pieces of lands such as land situate at Nariman Point or Bandra Complex, which has rightly been considered by Mr. Jogalekar while arriving at the conclusion of fixing the approximate value of these lands as at the

rate of Rs.60/- per square meter by treating all these pieces of lands at par.

42. The minimisation of distance from Churchgate to Panvel because of Thane Creek bridge by a distance of about 23 k.m.s. also has been correctly taken into account by Mr. Jogalekar in its proper perspective. Although Mr. Ambike had made a reference of this aspect in his valuation report he does not seem to have given due account to it at the time of actually fixing the rate of value.

43. Mr. Jogalekar has also rightly pointed out the mistake committed by the Special Land Acquisition Officer for fixing the value of these lands in between the rate of Rs.4/- to Rs.10/- per square meter. The Special Land Acquisition Officer appears to have not considered the effect of large scale acquisition of lands while fixing the rate of assessment at all. That is why a comment of Mr. Jogalekar on the capacity of this Special Land Acquisition Officer, assumes a full bearing and full importance when he said that the valuation of a large scale acquisition of the lands has to be done by a person who is the best expert or who has a foresight and nose for valuation.

44. It can only be said about the cross-examination of Mr. Jogalekar that it is only attempted by the Government to expose Mr. Jogalekar by comparing his valuation work with the work done by unexperienced hands of Special Land Acquisition Officer. It seems from the entire trend of cross-examination of Mr. Jogalekar that the work of expert for the Government, perhaps, had not then been completed so as to give data to the Government

Pleader to cross-examine the expert Mr. Jogalekar. That part, the importance and the ultimate impact of the work of valuation done by Mr. Jogalekar, therefore, does not lose its intrinsic value throughout his cross-examination and entire evidentiary value of the deposition of Mr. Jogalekar, therefore, remained unshaken and unfettered.

45. Now comes the question as to whether all these lands can be treated as at par as was done by Mr. Jogalekar while opining in the report that the lands could be assessed at the common rate of Rs.60/- per square metre, irrespective of their distance from the Highway. To my mind the distance from the National Highway of all these lands group wise will have a positive bearing and effect on the valuation to be annexed to each of these lands.

46. having considered, therefore, the reports of the two Experts viz. Mr. Shrikant Jogalekar and Prabhakar Ambike and further having considered the evidence led by the Claimants by producing various Judgments and various Valuation reports, I think that the lands can as well be classified in five groups. The lands which are situate just abutting the Highway and which are further situate within the distance of 300 metres from the Highway therefore, have been evaluated by me as at the rate of Rs.35/- (Rs. Thirty five) per square metre, while I fix the rate of valuation as at Rs.30/- per square metre for the lands which are situate within the distance of 300 meters to 1000 meters from the Highway and further fix the rate of Rs.25/- per square metre for other lands which are situate beyond the limits of 1000 meters from the Highway. The valuation of the lands of Kamothe has

> been done by me in consonance with the distance of the lands from the Highway. The lands which are, therefore, found to be near Highway have been assessed by me ultimately at the rates of Rs.35/- per square metre while other lands of village Kamothe beyond the distance of 1000 metre have been assessed at the rate of Rs.25/- per square metre."

3. We may also notice that during the pendency of the proceedings which have given rise to the present appeals, different judgments of this court had been pronounced in relation to the same acquisition and the two villages in question viz. Panvel and Kamothe. Reference in this regard can be made to a Division Bench judgment of this court in the case of The State of Maharashtra v. Bama Balu Tembhe, First Appeal No.382 of 1984, decided on 19th March, 1987, wherein the court had fixed the rate of compensation payable to the lands situated at village Panvel between Rs.14/- to Rs.16/- per sq. metre and similar compensation was awarded in respect of the lands situated at village Kamothe. In the case of Chairman, Jawahar Nagar Co-operative Housing Society Ltd. v. State of Maharashtra, 2001(4) Mh. L.J. 571, the Division Bench of this court after

considering various land acquisition references as well as the judgments of this court, awarded compensation at the rate of Rs.15/- per sq. metre for the lands situated in village Kamothe. In State of Maharashtra v. Ambaji Gopal Mali and others, First Appeal No.449 of 1986 decided by the Division Bench of this Court on 3rd July, 1986 the reference court had awarded compensation at the rate of Rs.15/- and in the case of State of Maharashtra v. Smt. Kamali Kashav Mhatre and others, 2005(1) All M.R. 459, another Division Bench of this court while considering all cases including the judgment in the case of Bama Balu Tembhe (supra), awarded compensation at the rate of Rs.25/- per sq.metre to the lands falling within 750 metres of the National Highway, at the rate of Rs.23/- per sq. metre for the lands falling between 750 and 1500 metres and in respect of the third category, at the rate of Rs.21/- per sq. metre for the lands beyond 1500 metres. It will be useful at this stage itself to notice the finding recorded by the Division Bench:

> " 6. We now come to the last issue in so far as the fixation of market value is concerned. As we have noted earlier, the Reference Court for the purpose of

fixing market value, categorised the land into four groups and accordingly awarded compensation ranging between Rs.15/- to Rs.25/-. In respect of the very same notification various other awards were made by the Reference Court and in respect of which several appeals had come up before this Court, being First Appeal No.754 of 1986 alongwith other appeals which came to be disposed of by a learned Division Bench of this Court (S.W. Puranik & D.J. Moharir, JJ.) on 25-26.02.1993. The lands involved there were situated within the Municipal limits of Panvel and Kamothe. After considering the material which had come on record including earlier awards made in the year 1966, the learned Division Bench divided the land into Group 1, Group 2, Group 3, Group 4A and Group 4B. In respect of the first group it awarded Rs.25/-, in the second group it awarded Rs.23/-, i the third group it awarded Rs.22/- and in the fourth (A) and (B) group it awarded Rs.20/- each. Against the judgment of the Division Bench SLP was preferred by the State Government, which was rejected.

Another group of appeals being First Appeal No.382 of 1984 came up before another Division Bench of the Court (Shah & Kotwal, JJ) which were disposed of by judgment pronounced between 03.03.1987 and 19.03.1987. The area included Panvel Village, Asudgaon village, Kamote Village and Kalamboli Village. The Division Bench noted that it is on record and not in dispute that Panvel is located on the Bombay-Pune National Highway, where the lands have acquired non-agricultural potentialities. It had become a centre for local trade and commerce. It is also a place of Taluka headquarter having a Municipality for a very long time. The lands under

acquisition are in the extended Municipal area, which is quite adjacent and practically encircling Panvel Town which has commercial activities and educational facilities. The Bombay-Pune Road and Diva-Panvel railway pass through this area. At a short distance to the east of Bombay-Pune National Highway within the extended Municipal limits lies the Industrial Estate where 35 factories are located. There is also a Co-operative Housing Society called Cosmopolitan Co-operative Society which has purchased lands for construction of houses for its members. Abutting the National Highway at some distance to the north of the Industrial estate is the factory of Jenson & Nicholson in existence for over six years prior to the notification under section 4. A few years prior to the present acquisition, lands had been acquired for the S.T. bus stand, chowkidars' quarters and so on. To the south of the acquired area is the junction of the two National Highways viz. Bombay, Pune and Bombay-Konkan-Goa road, hardly at a distance of two kms., proceeding to the north there is the junction of two major highways viz. Bombay-Pune Highway and Sion-Pune Highway. Various other aspects were also noted. It was urged by Mr. Paranjape, appearing for the claimants in that appeal that the distance of the National Highway should be the sole criteria for fixing the market value of each of the acquired lands. The learned Division Bench noted that cannot be the only criteria for fixing the market value though there is no doubt that the proximity of land from the road would be a very relevant consideration alongwith other factors for determination of the market value. The Division Bench noted that in their opinion several other factors such as the already existing non-agricultural development of the trend or possibility of further development in a

particular direction or locality has to be taken into account alongwith the advantage of nearness of the land to the highway, and based on this the learned Division Bench fixed the compensation.

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8. The first group will consist of the lands situated within 750 mts. of the National Highway where the market value is fixed at Rs.28/-. Considering 10% deduction and rounding the figure we fix the market value at Rs.25/-. This will be the market value for all such lands in the group of appeals.

The second group will consist of lands situated between 750 and 1500 sq. mts. In respect of these lands we fix the market value at Rs.26/-. Considering 10% deduction and rounding up the figure we fix the market value at Rs.23/- per sq. mt.

The third category will include the lands beyond 1500 sq. mt. We fix the market value of these lands at Rs.23.50 p. and after deducting 10% and rounding the figure, fix the market value at Rs.21/-."

4. It is the common case of the parties before us that substantially the evidence led by the parties in the present case is similar to the evidence that had been led by the parties in the previous land references. However, the valuation reports, Exhibit 30 and

Exhibit 49, were proved in accordance with law in the present case. While Exhibit 30 has been submitted by Modak Pangarkar Architects Pvt. Ltd. on behalf of the Claimants, Exhibit 49 has been submitted by Ambike Consultants, Engineering and Managing Consultants and Government Approved Valuers on behalf of CIDCO. Both these valuation reports were considered and discussed in the impugned judgment and despite the fact that under Exhibit 30 the market value of the land was stated to be Rs.60/- per sq. mtr. as on 3rd February 1970, according to Exhibit 49 the land was divided into three different categories and the market value of the lands was stated to be Rs.11/-, Rs.14/-, Rs.16/- and Rs.18/- per sq. mtr., depending on the frontage on the National Highway and still awarded the compensation at the rate of Rs.35/- and Rs.25/- per sq. mtr. respectively.

5. The correctness of the above findings of the Reference Court have been questioned on behalf of the State, inter alia, on the grounds : (a) the determination of fair market value at the rate of Rs.35/- per sq. mtr. particularly is based on no evidence and in fact

the land Reference Court has fallen in error of appreciation of evidence in awarding such high compensation. According to the Respondent State, the compensation could not in any case exceed Rs.16/- per sq. mtr. as awarded in First Appeal No.382 of 1984 in the case of *Bama Balu Tembhe* (supra). (b) Wherever the award was made prior to the amendment of the provisions of Section 23(1-A) i.e. 30th April 1982 the Claimants are not entitled to the benefit of the said provisions in accordance with the judgment of the Supreme Court. In the present case, some of the awards were made right from 1976 to 11st March 1982 and in support of this contention the Division Bench judgment of this Court in the case of Smt.Kamali Keshav Mhatre (supra) is relied upon. (c) According to the appellants, the lands in the present case are also situated at quite a distance from the National Highway and, therefore, the learned reference court could not have awarded compensation either at the rate of Rs.35/- or Rs.25/- per sq.mtr. while applying the belting system to different kind of lands.

6. Now we will proceed to discuss, though collectively, the merit or otherwise of these contentions. It may be noticed here that the Claimants who have filed Petitions under Section 28 of the Act had originally claimed compensation only at the rate of Rs.25/- per sq. mtr. but during the pendency of the Reference/determination proceedings, application for amendment was filed which was allowed by the Reference Court vide its order dated 3rd December 1992 and the Claimants by way of amendment claimed compensation at the rate of Rs.60/- per sq. mtr as valued by their Valuer. Exhibit 49 was proved by P.S. Ambike whose statement is at Exhibit 45, while Exhibit 30 was proved by S.V. Joglekar whose statement is Exhibit 29. Both these experts were called by the respective parties and to a limited extent they are expected to support the case of their respective clients. While Exhibit 30 indicates the value of the land as Rs.60/- per sq. mtr., Exhibit 49 declares the market value of the land on the same data between Rs.11/- to Rs.18/- per sq. mtr. One report is declaring excessive market value, while the other is much on the lower side. Even if both these reports which are stated to be supported by

certain instances and data are considered, the average market value would come anywhere between Rs.29/- to Rs.34/- per sq. mtr. The reports of the experts were discussed by the Land Reference Court and after noticing their statements in examination in chief and the cross-examination, discarded the evidence of the expert Mr. Ambike, led on behalf of the Government in paragraph 34 of the judgment. We have no reason to differ with the view taken by the Reference Court in this regard. However, as already noticed, even on the basis of average of these two reports, the value of the land can at best be said to be ranging between Rs.29/- to Rs.34/- per sq. mtr. depending on the location and utility of the lands in question. This we are merely noticing for reference purpose and would not like to base our findings in relation to fair market value of the land on these reports.

7. In First Appeal No.382 of 1984 it was specifically noticed by the Bench that the lands in those cases were situated away from the National Highway and, therefore, they were awarded compensation at the rate of Rs.14,/- to Rs.16/- per sq. mtr. in relation to the lands

situated in the revenue estate of Village Panvel and Kamothe. At pages 121 and 122 of the judgment of the Division Bench in First Appeal No.382 of 1984, it was specifically noticed that the piece of land involved in those cases was near to Sion-Panvel road but was far away from Highway. The lands there were also far away from Jawahar Industrial Estate and the distance was more than 900 mtrs. In any case, the judgment of this Court in the case of Ambaji Gopal Mali (supra), the compensation of Rs.15/- as awarded by the Reference Court was interfered by the Division Bench of this Court and even Appeal preferred by the State against that order before the Supreme Court was dismissed. Both these judgments along with other land references relating to the same land and Notification were considered in detail with regard to different judgments of the Supreme Court as well by the Division Bench of this Court in the case of Smt.Kamali Keshav Mhatre and compensation varying from Rs.21/- to Rs.25/- by categorising the lands into three categories was awarded by the Court. That judgment has also attained finality as the State has not challenged the said judgment before the Court of competent

jurisdiction and we are informed that the compensation in terms of that judgment has already been paid to the Claimants.

8. From the records of the Reference Court, it appears that no new sale instances had ever been produced or proved by the parties and the evidence was restricted to the awards filed on record and the evidence of the experts. In face of the limited evidence led by the parties, the earlier awards filed on record can be a good precedent for determining the fair market value of land in question. It is a settled principle of law that the earlier awards and judgments of the Courts can be a good guide for determining the market value of the land as on the date of Notification. Reference can be made to the judgment of the Supreme Court in the case of Karan Singh vs. Union of India, 1997 (8)SCC 186. In the case of Kamali Keshav Mhatre(supra), the lands were located near to the National Highway and this fact was clearly noticed by the Court in its judgment. In that case, the land had been categorised into three different categories, one falling within 750 metres of the National Highway, lands falling within 750 to 1500

metres and lands beyond 1500 metres. They were awarded compensation at the rate of Rs.25/-, Rs.23/- and Rs.21/- respectively. This judgment of the Division bench was pronounced on 31st March 2004 while the judgment of the Reference Court under Appeal was made on 14th October 1994. Obviously the Land Reference Court did not have the benefit of perusing the judgment of the Division Bench of this Court being a judgment subsequent to the date of pronouncement of the award of the Reference Court. The Land Reference Court has not discussed any evidence on the basis of which it has arrived at the figure of Rs.35/- per sq. mtr. for the lands within 300 metres of the National Highway. It is true that the Reference Court can apply certain amount of guess work while determining the compensation, but it is necessary that there has to be basic evidence to support such a finding, though a limited increase or decrease on guess work could be awarded by the Court. Reference can be made to a Division Bench judgment of this court in the case of (Chunnibai Kalidas Patel v. State of Maharashtra) 2007 (4) Mh.L.J. 753, where it is held that the court has to apply certain guess work within its reasonable limits to arrive at

a fair market value of the lands acquired. Except the valuation reports Exhibit 30 and Exhibit 49 which have been rejected by the Reference Court, there is no evidence to show that value could be determined at the rate of Rs.60/- or Rs.35/- per sq. mtr. We as an equi Bench are bound by the judgment and in any case have no reason to differ with the view taken by the Division Bench. Thus, following the market value determined in that judgment, we also award compensation to the Claimants for acquisition of the lands as under :

(a) Lands falling within 750 metres of the National Highway – Rs.25/- per sq. metre.

(b) Land falling within 750 to 1500 metres of the National Highway – Rs.23/- per sq.metre.

(c) Land falling beyond 1500 metres of the National Highway – Rs.21/- per sq. metre.

9. The other contention raised on behalf of the State is also to be accepted and the contention of the Claimants that they are entitled to all the benefits of Section 23(1-A) even if the awards were pronounced by the Collector prior to 30th April 1982 is to be rejected.

The Division Bench of this Court in the case of Smt.Kamali Keshav Mhatre (supra), clearly answered this question in favour of the State and it will be useful to refer to the findings recorded by the Division Bench in this regard as under :

> " The argument sought to be advanced on behalf of the claimant is that, the ratio that would not apply to an application made under section 28(A). At the highest it is contended that the ratio of those judgments can be extended to those proceedings which arose out of reference under Section 18 or Section 30 of the Land Acquisition Act. We are afraid we cannot countenance such an argument. If it is not open to the Courts to award compensation under section 23(I-A) where the award was made before 30/04/1982 or who had applied under section 18 or where; dispute was referred under Section 30 of the Land Acquisition Act to get the additional compensation, merely because an additional right has been conferred on the claimant to apply under section 28(1-A), would not result in such claimant being entitled to benefits which otherwise were not available to claimants where awards were passed before 30/04/1982. The Section would have to be read to mean that under Section 28(A) also, those claimants would be entitled to the benefit under Section 23(A) which were available to the claimants in respect of whom proceedings were pending before the Collector on 30/04/1982. The contention therefore, advanced on behalf of the claimants/appellants will have to be rejected. The contention of the State will have to be upheld only in

> those appeals where proceedings were pending before the Collector on 30/04/1982 and award under section 11 was not made would be entitled to compensation under section 23(1-A). In other words proceedings must have been pending before the Collector on 30/-4/1982 and no award had been made before the date. In all such cases the appeal to that extent will have to be allowed and the order of Reference Court awarding compensation under section 23(1-A) will have to be set aside."

10. In addition to the above reasoning, we may also add here that the proceedings before the Reference Court whether by way of Petition under Section 28-A of the Act or under Section 18 of the Act are proceedings before the Court of competent jurisdiction. The award made by the Collector is in exercise of the powers vested in him under Section 11 of the Act. The award can only be interfered by the judicial process either in a reference under Section 18, 28A or by the High Court in exercise of its appellate jurisdiction. The award under Section 11 thus is result of a statutory proceedings and quasi judicial powers vested in the Collector and if that exercise was completed prior to the date of amendment i.e. 30th April 1982, it cannot be said

that because proceedings under Section 28-A are taken, the award would stand wiped out. For example, in cases where proceedings under Section 28A are not initiated by the Claimants who had not availed of remedy under Section 18 remedy as well, for them the award would remain intact and whether they would be entitled to receive the benefit of Section 23(1-A) of the Act or not would obviously depend upon the date of the award made under Section 11 of the Act. Resultantly, while following the reasoning given by the Division Bench in the case of Smt.Kamali K. Mhatre (supra), we also have no hesitation in accepting the contention raised on behalf of the State in this regard.

11. In these appeals, the parties have filed some civil applications. As many as nine applications have been filed, six by the State and three by the claimants, for setting aside abatement and bringing the legal representatives of the deceased-respondents on record. Six applications viz. Civil Application Nos.4246/1995, 4243/1995, 789/1990, 6099/1994, 5567/1992, 5781/1991 have been

filed by the State praying for stay of the judgment of the reference court and that the State should not be directed to pay the entire enhanced compensation to the claimants. Still thirteen civil applications have been filed being Civil Application Nos.4858/2003, 1636/2007, 3732/2006, 3016/2003, 4338/2003, 4265/2003, 939/2003, 670/1989, 4857/2003, 4070/2001, 3924/2001, 3932/2001, 4716/2003, by the respondents-claimants in appeals by the State and one cross-objection filed by the respondent No.6 for leading additional evidence and lastly, civil application No.3513 of 2007 has been filed for restoration of the appeal. It may be noticed that none of the non-applicants have filed replies to these applications and there was no serious opposition to these applications even during the course of hearing. The applications were pending before the court for considerable time and we have heard all these applications along with the appeals. In some applications parties have prayed for leading additional evidence, including Civil Application No.1636 of 2007, and paragraph 3 of which reads as under:

> "3. The applicants state that the additional ground to be added in memo of Appeal, is necessary for asserting the fundamental right given to the Applicants under the Second Proviso to Article 31A of the Constitution of India. The applicants are holding agricultural lands, the applicants are agriculturists, and the applicants are cultivating their lands personally as contemplated by law and their Land holding is within the ceiling limits. Almost all the aforesaid fact have either been brought on record either explicitly or by implication necessary or otherwise. However, this Hon'ble Court is likely to require Additional evidence to enable it to pronounce its judgment based on the aforesaid additional ground and in any case, as the applicants are pressing the aforesaid ground in support of their fundamental right. There in substantial cause to allow them to lead evidence on the aforesaid point, documentary and/or orally."

12. However, in other applications, the applicants have prayed for permission to lead additional evidence by producing on record the awards which have been made during the pendency of the proceedings or even after passing of the judgment by the learned reference court. In civil application No.4858 of 2003, reference has been made to certain judgments and awards which are placed on record.

13. As far as these applications for additional evidence are concerned, no specific ground has been taken as to why these awards were not placed on record of the trial court when initially, the cases were fixed for evidence. Some of these awards relate to different villages like Raigad and Alibag and no details or particulars of these awards have been given. Copies thereof have not been annexed to these applications. Besides the question of relevancy, these awards were ever in the knowledge of the applicants. The applications are vague. Mere allegation that these documents were not in existence, is not sufficient as even on the date of decision of these cases have not been given. The award in the present case was made on 14th October, 1994. There was sufficient direct evidence before the reference court to determine the matters in controversy in accordance with law. The applicants are expected to make out a sufficient ground for permission to lead additional evidence as it cannot be merely treated as a matter of routine. The cases have been decided after years. The callousness on the part of the applicant

is also obvious from the fact that relevancy of these documents could not be examined by this court as they have failed to annexe the copies of the documents sought to be placed on record by way of additional evidence.

14 We may also notice that there is sufficient evidence on record for determining the market value and particularly, the Division Bench judgment of this court in the case of Smt. Kamali K. Mhatre (supra) squarely apply on facts and law to the present case as such no prejudice would be caused to the applicants even if their request was disallowed. It needs to be noticed that in the application reference has been made to a Division Bench judgment of this Court in First Appeal No.754 of 1986. Then it is averred that this award or judgment could not be placed on record because it was subsequent to the judgment impugned in the present appeals. This averment is factually incorrect in asmuch as First Appeal No.754 of 1986 was decided by a Division Bench of this Court on 25th/26th February 1993 and has been even reported as 1993(3) Bombay Cases Reporter,

page 54. The lands in those cases were acquired from Village Panvel and Kamothe, the notification of which was issued on 3rd February, 1970. The Bench had awarded compensation at the rate of Rs.25/- per sq. mtr. Thus, the application is based on incorrect averments. Furthermore, it can also be noticed that judgments of other Division Benches subsequent to the judgment in First Appeal No.754 of 1986 have already been placed on record wherein similar compensation of Rs.25/- per sq. mtr. was awarded for acquisition of lands from the same villages. For the reasons aforementioned, we are not inclined to allow the application and consequently, all the thirteen applications for leading additional evidence are hereby rejected, however, without any order as to costs.

15. In the applications filed by the State seeking stay of award, no order needs be passed as we are disposing of the main appeal itself. The nine applications for condonation of delay filed by the parties are allowed as no reply to these applications has been filed and, in fact, there is no opposition by the non-applicants to these

applications. The legal representatives of the deceased respondents, thus, are permitted to be brought on record. The delay caused in filing these applications is condoned. All the added legal representative shall be entitled to the benefits of the judgment in accordance with law. Resultantly, all the nine applications are, accordingly, disposed of. Civil application for restoration of the appeal, as there being no opposition, is also allowed. The appeal in question is restored to file and is disposed of along with this judgment.

16.

16. For the reasons afore-recorded, we partially allow the Appeals filed by the State and the Appeals and Cross Objections filed by the Claimants are dismissed.

17. The Claimants would be entitled to compensation for acquisition of their lands as under :-

(a) Lands falling within 750 metres of the

National Highway – Rs.25/- per sq. metre.

(b) Land falling within 750 to 1500 metres of the National Highway – Rs.23/- per sq. metre.

(c) Land falling beyond 1500 metres of the National Highway – Rs.21/- per sq. metre.

18. The Claimants would also be entitled to get benefit of Sections 23(1)(A), 28 and all other statutory benefits subject to the limitation that wherever the awards have been made prior to the date of amendment i.e. 30th April 1982, the Claimants would not be entitled to receive the special benefits under Section 23(1-A) of the Act.

19. All the Appeals, Cross-Objections and Civil Applications are disposed of accordingly leaving the parties to bear their own costs.

CHIEF JUSTICE

V.M. KANADE, J.